



3-10-03

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of
Burbank et al.

For: **BREAST BIOPSY SYSTEM AND
METHOD**

Serial No.: 09/929,371

Filed: August 13, 2001

Atty. Docket No.: 09619.1001

Examiner: Not yet assigned

Group Art Unit: 3736

Customer No. 23422

**PETITION FOR
RECONSIDERATION OF
NOTICE OF OMITTED ITEMS**

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CERTIFICATE OF MAILING PURSUANT TO 37 CFR 1.8

I hereby certify that this paper is being deposited in the United States mail as first class mail with postage prepaid, and is addressed to the Commissioner for Patents, U.S. Patent and Trademark Office, Washington, D.C. 20231 on 2/5/03 in San Francisco, CA.

By:

Commissioner for Patents
U.S. Patent and Trademark Office
Washington, D.C. 20231

Repln. Ref: 07/31/2003 AKELLEY 0013124100
DAH:130201 Name/Number:09929371
FC: 9204 \$130.00 CR

Applicants have received the Notice Of Omitted Item(s) In A Nonprovsional Application, mailed November 12, 2002 and having a response due January 12, 2003 in the above-referenced application. The Notice Of Omitted Item(s) states that "Page(s) 22-26 of the specification" appear to have been omitted from the application upon filing.

Applicants hereby petition the Patent Office for reconsideration of the Notice of Omitted Item(s) in the above-referenced application filed on August 13, 2001. Applicants' respectfully assert that the above-referenced application was expressed mailed on August 13, 2001 in its entirety (27 pages total) to the Patent Office. Enclosed herewith is a copy of the self-stamped return receipt postcard from the Patent Office which acknowledges receipt of the above-referenced application in its entirety as expressed mailed on August 13, 2001. The Patent Office acknowledged receiving 27 pages of the application consisting of 19 pages of specification, 7 pages of claims, and 1 page of abstract.

02/12/2003 KZEWDIE 00000031 09929371

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Adjustment date: 07/31/2003 AKELLEY
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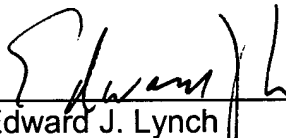
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Applicants inadvertently failed to file an Associate Power Of Attorney and Change of Correspondence Address when filing the above-referenced application, which resulted in Applicants' delayed receipt of the Notice of Omitted Item(s) mailed to the address of Applicants' attorney's former law firm Heller Erhman White & McAuliffe LLP. Applicants' counsel did not receive the Notice of Omitted Item(s) until January 29, 2003. Please see enclosed copy of letter dated January 27, 2003 from Heller Erhman transferring the said Notice in connection with this application to applicants' counsel's present address. Consequently, it is unintentional that Applicants respond to the Notice of Omitted Item(s) beyond the response due date; however, given the facts, Applicants consider the Petition herein timely.

Based on the facts above, Applicants believe themselves not to be in error of omitting pages 22-26. The Petition fee under 37 CFR § 1.17(h) is enclosed herewith. The Commissioner is hereby authorized to charge any additional fees and to credit any overpayment of fees which may be required under 37 CFR §§ 1.16. and 1.17 to Deposit Account No. 13-0201, referencing Attorney Docket No. 09619.1001. Applicants respectfully submits that pages 22-26 in the above-referenced application were indeed included with the application at the time of filing and respectfully request reconsideration.

Respectfully,

By: _____


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may be manipulated to segment said tissue specimen after it has been isolated from the surrounding tissue.

14. The biopsy instrument as recited in Claim 13, wherein said cutting element segments said tissue specimen as it is being retracted from said radially extended position to said radially retracted position.

15. The biopsy instrument as recited in Claim 14, wherein said radially extended position comprises a first radially extended position, and said cutting element is further actuatable to a plurality of additional radially extended positions, said cutting element being rotatable about said axis in each of said radially extended positions to selectively peripherally segment said tissue specimen.

16. The biopsy instrument as recited in Claim 13, and further comprising a cannula having a lumen for providing a passageway into the patient's body, the segments of said tissue specimen being removable from the patient's body through said cannula.

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B1 17. The biopsy instrument as recited in Claim 5, wherein said instrument further comprises an element for encapsulating said tissue specimen so that it may be withdrawn as a single unit from the patient's body.

18. The biopsy instrument as recited in Claim 17, wherein said encapsulating element comprises a band disposed along said shaft, said band being actuatable between a radially retracted position and a radially extended position.

19. The biopsy instrument as recited in Claim 17, wherein said encapsulating element comprises a plurality of bands disposed along said shaft, each of said bands

being actuatable between a radially retracted position and a radially extended position.

20. The biopsy instrument as recited in Claim 19, wherein said cutting element comprises one of said encapsulating elements. //

21. An instrument for retrieving body tissue, having a longitudinal axis and comprising:

a distal end adapted for entry into a patient's body; and
an element for encapsulating a tissue specimen so that it may be withdrawn as a
5 single unit from the patient's body. //

22. The instrument as recited in Claim 21, wherein said encapsulating element comprises an axially disposed band, said band being actuatable between a radially retracted position and a radially extended position. //

23. The biopsy instrument as recited in Claim 21, wherein said encapsulating element comprises a plurality of bands disposed along said axis, each of said bands being actuatable between a radially retracted position and a radially extended position. //

24. The biopsy instrument as recited in Claim 23, wherein said instrument is rotatable about said axis in order that said bands may be twisted for encapsulating said tissue specimen. //

25. The biopsy instrument as recited in Claim 21, and further comprising an axially disposed cutting element, the cutting element being actuatable between a radially retracted position and a radially extended position, and being rotatable about said axis in said radially extended position to isolate a desired tissue specimen from surrounding //

tissue by defining a peripheral margin about said tissue specimen.

26. The biopsy instrument as recited in Claim 25, wherein said cutting element comprises an electrosurgical cutting element. //

27. The biopsy instrument as recited in Claim 21, and further comprising a sheath which is axially movable between distal and proximal positions for selectively covering and uncovering the encapsulating element. //

28. The biopsy instrument as recited in Claim 21, and further comprising a cutting element which is actuatable to cut tissue as said instrument is proximally withdrawn from said patient's body with said encapsulated intact tissue specimen. //

~~29. A method for retrieving a tissue specimen from a patient's body, comprising the steps of:~~

~~inserting an instrument having a distal end, a longitudinal axis, and an axially disposed cutting element into the patient's body, so that the distal end is disposed in a tissue region from which the tissue specimen is to be taken;~~

~~radially extending said cutting element so that a portion thereof is radially outwardly spaced from the axis of said instrument; and~~

~~rotating said cutting element about said axis to cut said tissue and create a peripheral boundary about said tissue specimen, to isolate the tissue specimen from surrounding tissue in the tissue region.~~

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30. The method as recited in Claim 29, and further comprising the step of encapsulating said tissue specimen. //

31. The method as recited in Claim 30, wherein the encapsulating step includes the step of radially expanding at least one encapsulating element so that a portion thereof is radially outwardly spaced from the axis of said instrument and rotating said instrument about its axis so that said at least one encapsulating element encloses said tissue specimen.

32. The method as recited in Claim 31, wherein said at least one encapsulating element comprises a plurality of bands which are disposed axially along said instrument.

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A2 } 33. The method as recited in Claim 30, and further comprising the step of proximally withdrawing said instrument, with the encapsulated tissue specimen, from the patient's body, said step including the step of cutting tissue as the instrument is withdrawn.

34. The method as recited in Claim 29, and further comprising the step of segmenting said tissue specimen.

35. The method as recited in Claim 34, and further comprising the step of withdrawing each segment of said tissue specimen through a cannula lumen.

36. The method as recited in Claim 34, wherein the step of segmenting said tissue specimen includes the step of radially retracting said cutting element so that the tissue specimen is segmented radially.

37. The method as recited in Claim 34, wherein the step of segmenting said tissue specimen includes the steps of partially radially retracting said cutting element

from its fully radially expanded position and rotating the instrument about its axis to cut said tissue and create a circumferential tissue segment.

38. The method as recited in Claim 37, wherein the segmenting step is repeated at differing partially radially expanded positions of the cutting element, so that a plurality of circumferential tissue segments are created.

39. The method as recited in Claim 29, and further comprising the step of simultaneously moving the cutting element axially as it is rotated about said axis to cut said tissue.

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